

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Steven Blair Camden, #1552) C/A No. 6:14-4554-BHH-JDA
)
)
Plaintiff,)
)
)
vs.) **REPORT AND RECOMMENDATION**
)
)
City of Greenville; Greenville Police) ***for dismissal of one defendant***
Department; Officer Shelton; Jimmy)
Digirolamo; Mary Thomas; Benjamin Thomas;)
Alia Paramore; Richard Schwartz; Charlse)
Lane; Jamie Lepak; B.W. Lusk; Diana M.)
Cadavid; P.C. Loyd; Jeff Burdette; R.C. Hall;)
Adam Kearney; Melissa Lawson; Ronald)
Powell; Benedict Sambrano; Jessica Hawkins;)
Joshua Tankersley; Nathan Smith; and Samuel)
Holbrooks, each individual allegedly a)
Greenville City Police Officer,)
)
)
Defendants.)
)
)

Steven Blair Camden (“Plaintiff”), proceeding pro se, brings this civil action alleging Defendants violated his constitutional rights. Plaintiff is a detainee in the Greenville County Detention Center, and he files this action *in forma pauperis* under 28 U.S.C. § 1915. Defendant Greenville Police Department is subject to summary dismissal.

BACKGROUND

Plaintiff alleges that Officer Shelton shot him several times on July 5, 2014, and this wrongful conduct constituted excessive force. [Doc. 1 at 2–4.] He alleges the Greenville City police officers authored reports about the incident from July 5–7, 2014, and they falsified their reports.* [Id.]

* Only several pertinent alleged facts are set forth herein because service of process is authorized for most Defendants.

STANDARD OF REVIEW

Pursuant to the provisions of 28 U.S.C. §636(b)(1)(B), and Local Civil Rule 73.02(B)(2)(d) DSC, the undersigned is authorized to review the Complaint for relief and submit findings and recommendations to the district court. Plaintiff filed this action pursuant to 28 U.S.C. § 1915, the *in forma pauperis* statute. This statute authorizes the district court to dismiss a case if it is satisfied that the action “fails to state a claim on which relief may be granted,” is “frivolous or malicious,” or “seeks monetary relief against a defendant who is immune from such relief.” 28 U.S.C. § 1915(e)(2)(B).

As a pro se litigant, Plaintiff’s pleadings are accorded liberal construction and held to a less stringent standard than formal pleadings drafted by attorneys. See *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (*per curiam*). However, even under this less stringent standard, a portion of the pro se pleading remains subject to summary dismissal. The mandated liberal construction afforded to pro se pleadings means that if the Court can reasonably read the pleadings to state a valid claim on which Plaintiff could prevail, it should do so, but a district court may not rewrite a petition to include claims that were never presented, *Barnett v. Hargett*, 174 F.3d 1128, 1133 (10th Cir. 1999), or construct Plaintiff’s legal arguments for him, *Small v. Endicott*, 998 F.2d 411, 417-18 (7th Cir. 1993), or “conjure up questions never squarely presented” to the Court, *Beaudett v. City of Hampton*, 775 F.2d 1274, 1278 (4th Cir. 1985). The requirement of liberal construction does not mean that the Court can ignore a clear failure in the pleading to allege facts which set forth a claim cognizable in a federal district court. See *Weller v. Dep’t of Soc. Servs.*, 901 F.2d 387, 391 (4th Cir. 1990).

DISCUSSION

The Complaint is filed pursuant to 42 U.S.C. § 1983, which “‘is not itself a source of substantive rights,’ but merely provides ‘a method for vindicating federal rights elsewhere conferred.’” *Albright v. Oliver*, 510 U.S. 266, 271 (1994) (quoting *Baker v. McCollan*, 443 U.S. 137, 144 n.3 (1979)). A civil action under § 1983 “creates a private right of action to vindicate violations of ‘rights, privileges, or immunities secured by the Constitution and laws’ of the United States.” *Rehberg v. Paulk*, 132 S. Ct. 1497, 1501 (2012). To state a claim under § 1983, a plaintiff must allege two essential elements: (1) that a right secured by the Constitution or laws of the United States was violated, and (2) that the alleged violation was committed by a person acting under the color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988).

It is well settled that only “persons” may act under color of state law, so a defendant in a § 1983 action must qualify as a “person.” Defendant Greenville Police Department is not subject to suit under § 1983 because it is not a person. Although Plaintiff may be attempting to sue the entire City of Greenville police department, which is a lawsuit against a group of people, groups of people are not amenable to suit under § 1983. Further, sheriffs’ departments and police departments usually are not considered legal entities subject to suit. See *Harden v. Green*, 27 F. App’x 173, 178 (4th Cir. 2001) (finding that the medical department of a prison is not a person pursuant to § 1983); *Nelson v. Lexington Cnty. Det. Ctr.*, C/A No. 8:10-2988-JMC, 2011 WL 2066551, at *1 (D.S.C. May 26, 2011) (finding that Food Service Supervisors was a group of people not subject to suit); *Dalton v. South Carolina Dep’t of Corr.*, C/A No. 8:09-260-CMC-BHH, 2009 WL 823931, at *2

(D.S.C. March 26, 2009) (dismissing the medical staff of SCDC and Prison Health Services as defendants because they were not persons). Therefore, the Greenville Police Department should be dismissed from this action because Plaintiff fails to state a § 1983 claim against it.

RECOMMENDATION

It is recommended that the Defendant Greenville Police Department be dismissed from this action without prejudice and without issuance and service of process. See *Neitzke v. Williams*, 490 U.S. 319, 324-25 (1989); *Haines v. Kerner*, 404 U.S. 519 (1972). The lawsuit remains pending against the other Defendants at this time. **Plaintiff's attention is directed to the important notice on the next page.**

January 12, 2015
Greenville, South Carolina

s/Jacquelyn D. Austin
United States Magistrate Judge

Notice of Right to File Objections to Report and Recommendation

The parties are advised that they may file specific written objections to this Report and Recommendation with the District Judge. Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections. “[I]n the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must ‘only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.’” *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee’s note).

Specific written objections must be filed within fourteen (14) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); see Fed. R. Civ. P. 6(a), (d). Filing by mail pursuant to Federal Rule of Civil Procedure 5 may be accomplished by mailing objections to:

Robin L. Blume, Clerk
United States District Court
300 East Washington Street, Room 239
Greenville, South Carolina 29601

Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation. 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140 (1985); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984).